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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,692	07/08/2003	Werner Loser	5312	7427

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EXAMINER

POPOVICS, ROBERT J

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,692

Applicant(s)

LOSER, WERNER

Examiner

Robert J. Popovics

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on March 9, 2005 (Supplemental Remarks).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 17-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

Claims **1-14** and **17-18** are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over **EP 0203206**. **EP 0203206** appears to disclose a filter as claimed. The specific number of rods, dimensional parameters, spacing and shapes may differ. However, absent a showing of criticality, or unexpected results specifically associated therewith, the specific number of rods, dimensional parameters, spacing and shapes are considered parameters that would have been routinely manipulated by the skilled artisan. See MPEP Sections 2144.04 IV. A+B relating to changes in shape, dimensions, etc.

Response to Amendment

The Declaration under 37 CFR 1.132 filed February 4, 2005 is insufficient to overcome the rejection of claims **1-14** and **17-18** based upon EP 0203206 as set forth in the last Office action because: The filter cartridge discussed in the Declaration and the scope of the claims are not commensurate. The Declaration submitted by Mr. John Desmet is concerned with filter cartridges having, among other things, "**perfect roundness**" and "**perfect straightness.**" The instant claims do not specify such a cartridge. Moreover, it appears that Mr. Desmet admits that it was physically possible (i.e., "it was difficult") to produce cartridges having a diameter of less than 30 mm, but not economically feasible (see last ¶ of page 1 of Desmet Declaration).

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Response to Arguments

Applicant's arguments filed March 9, 2005 and February 4, 2005 have been fully considered but they are not persuasive. In the Remarks submitted on March 9, 2005, Applicant stated:

"This is to clarify the remarks of our February 4 amendment.

We argued that EP 203 206 discloses filter cartridges have a diameter of more than 30 mm. Actually, EP 203 206 does not explicitly state that the filter cartridges have a diameter of more than 30 mm"

This statement appears to contradict a statement made in Applicant's Specification:

[0052] The design of the filter cartridge 1 and its fixing to the dividing plate is otherwise carried out in a manner known per se, in particular for example in accordance with the design in EP 203 206. The wire 7 has a triangular cross section, in a manner known per se. The point of the triangle is oriented inwards and is connected to the supporting rods 2. The smooth outer surface of the wound wire 7 forms the outer side of the cartridge wall 10. With the exception of the reduction in the diameter d, the number and shape of the supporting rods 2, the dimensions and design of the cartridge wall 10 correspond substantially to the disclosure in EP 203 206. (Emphasis Added by Examiner)

Clarification and/or correction is requested.

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Applicant cites Mr. Desmet's Declaration and asserts that "***stability and deformation problems observed in smaller devices***" have been solved. The Declaration and record as a whole do not provide probative evidence of such. Accordingly, the rejection is maintained. The use of members having tapered cross-sections is very well known in the filtration art. See Figures 23-32 of Lutz (US 6,491,168) for example. A change in the shape of support members is not seen to constitute a patentable distinction, absent a showing of unexpected results specifically associated therewith.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Robert J. Popovics at telephone number (571) 272-1164.

A handwritten signature in black ink, appearing to read 'R. J. Popovics', with a stylized flourish underneath.

Robert James Popovics
Primary Examiner
Art Unit 1724

May 16, 2005